IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Bail Appl..No. 3973 of 2007()

CRIME NO.151/07 OF WADAKKANCHERY POLICE STATION

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PETITIONER/2ND ACCUSED:

MUTHU @ JAYAPRAKASH,
S/O.RAMAKRISHNAN, AGED 23 YEARS,
NJARASSERY VALAPIL HOUSE,PUNNAMPARAMBU DESOM,
THEKKUMKARA VILLAGE,THALAPPILLY TALUK,THRISSUR.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA REPRESENTING
SUB INSPECTOR OF POLICE,WADAKKANCHERY POLICE
STATION, REP. BY PUBLIC PROSECUTOR, HIGH COUT OF
KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.3973 of 2007

Dated this the 2nd day of July 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. Altogether there are four accused persons. F.I.R is registered inter alia under Sections 308 and 324 read with 34 I.P.C. The defacto complainant was the passenger in an autorickshaw. There was an exchange of words between a motor cycle rider and the autorickshaw driver. The defacto complainant had also allegedly participated in that discussion and quarrel. Actuated by oblique motives, the accused persons, four in number, are alleged to have attacked the defacto complainant thereafter with dangerous weapons. One stabbed the defacto complainant. Injury was suffered by the defacto complainant. Emergency surgery had been done. The investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations against the petitioner are baseless and are raised

with oblique motives. No specific overt act is alleged against the petitioners. At worst, it can only be assumed that there was an unexpected quarrel and in the course of that quarrel, an incident had taken place. At any rate, it is not necessary to insist on arrest and incarceration of the petitioner for any length of time. The allegation under Section 308 I.P.C has been raised with vexatious intent only to ensure that the petitioner remains in custody for as long a period as possible.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are serious. For no provocation, the defacto complainant was attacked. Injury suffered is serious. Available indications do suggest that the injury suffered is serious and life threatening. At any rate, there are no circumstances justifying the invocation of the jurisdiction under Section 438 Cr.P.C, submits the learned Public Prosecutor. I find merit in the opposition by the learned Public Prosecutor. I do not find any circumstances which would justify the invocation of the discretion under Section 438 Cr.P.C. This is an eminently fit case where the petitioner must follow the normal and ordinary

procedure of surrendering before the investigating officer or the learned Magistrate having jurisdiction. He must then seek bail in the ordinary course.

4. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate or the investigating officer and seek bail in the regular and ordinary course.

3. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007